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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69536; File No. SR-NASDAQ-2013-072)

May 8, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend Fees Assessed Under Rule 7015(h)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 24, 2013 The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On May 3, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to amend the fees assessed under Rule 7015(h). On May 3, 2013, NASDAQ filed Amendment No. 1 to add additional clarifications to statutory basis discussion. NASDAQ implemented the amended fees effective on May 1, 2013.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

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**7015. Access Services**

The following charges are assessed by Nasdaq for connectivity to systems operated by NASDAQ, including the Nasdaq Market Center, the FINRA/NASDAQ Trade Reporting

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Facility, and FINRA's OTCBB Service. The following fees are not applicable to the NASDAQ Options Market LLC. For related options fees for Access Services refer to Chapter XV, Section 3 of the Options Rules.

(a) – (g) No change.

(h) VTE Terminal Fees

- Each ID is subject to a minimum commission fee of \$250[125] per month unless it executes a minimum of 100,000 shares.
- Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.
- Each ID that is given web access is subject to a \$250[125] monthly fee.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to increase the fees assessed members under Rule 7015(h) for use of VTE terminals. A VTE terminal is a basic front-end user interface used by NASDAQ members to connect to, and enter orders in, The Nasdaq Market Center. Members using VTE

terminals pay the exchanges and market centers separately for data feeds and services provided by NASDAQ, other exchanges or market centers through VTE. Such fees are filed with the SEC and separately assessed by the exchanges and market centers at the same rate irrespective of the method of accessing the data feeds. These data feeds provide information that is necessary for users to enter orders through VTE. The two fees assessed under Rule 7015(h) relate to optional web access and commissions.

Rule 7015(h) currently assesses monthly a minimum commission fee of \$125 per ID for users executing orders totaling less than 100,000 shares per month, and a web access fee of \$125 per ID. NASDAQ last increased fees assessed under Rule 7015(h) in 2011 when it raised the fee for access to the terminal via the web from \$100 monthly to \$125 monthly, and raised the minimum commission fee for users executing orders totaling less than 100,000 shares per month from \$100 monthly to \$125 monthly.<sup>3</sup> In light of increasing costs, NASDAQ is proposing to increase the fee for access to the terminal via the web from \$125 monthly to \$250 monthly, and increase the minimum commission fee for users executing orders totaling less than 100,000 shares per month from \$125 monthly to \$250 monthly.

NASDAQ notes that web connectivity is one option available to NASDAQ users for accessing the VTE terminal. Another option is access through extranet connectivity, where a user contracts directly with a third-party extranet provider and pays fees to that provider. With respect to minimum commission fees, members that execute total orders above the 100,000 share threshold will continue to not be assessed a commission fee.

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<sup>3</sup> Securities Exchange Act Release No. 65014 (August 2, 2011), 76 FR 48189 (August 8, 2011) (SR-NASDAQ-2011-101).

Based on NASDAQ's operation of the VTE since it was acquired from INET, NASDAQ believes that the pricing changes are warranted in order to appropriately balance the demand for the product with increasing platform, overhead and technology infrastructure costs.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>4</sup> in general, and with Section 6(b)(4)<sup>5</sup> of the Act, in particular. The Exchange believes it is consistent with Section 6(b)(4) of the Act because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. All similarly situated members are subject to the same fee structure, and access to this NASDAQ service is offered on fair and non-discriminatory terms. NASDAQ has not increased the fees assessed under Rule 7015(h) since 2011 despite incurring a substantial decrease in subscribership, resulting in higher per-subscription costs as fixed costs are spread among fewer users. Moreover, during this time NASDAQ has also experienced increased costs associated with ongoing support of the VTE platform, which include platform, overhead and technology infrastructure costs. In order to continue to offer this service, NASDAQ must increase the subscriber fees as proposed to cover the overall general increase in cost to support the service, and to cover the increased cost resulting from a smaller subscriber base. The proposed fees realign the balance of the costs discussed above to the fees received for the service so that it is similar to the ratio at the time of the last fee increase. NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. Use of VTE terminals is entirely optional and members can avail

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<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

themselves of numerous other means of accessing The Nasdaq Market Center. Members are not obligated to subscribe to VTE terminals and may cancel an existing subscription at any time, with the obligation to pay only for full the monthly fee for the month canceled. As such, the Exchange believes that the proposed fees are reasonable.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed fees merely allow NASDAQ to recapture the increasing platform, overhead and technology infrastructure costs it incurs in support of the service, which are magnified on a per subscription basis given a declining subscriber base. The fees are applied uniformly among subscribing member firms, which are not compelled to subscribe to the service and may access the information provided through other means. For these reasons, any burden arising from the fees is necessary in the interest of promoting the equitable allocation of a reasonable fee.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,<sup>6</sup> and paragraph (f)<sup>7</sup> of Rule 19b-4, thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-072 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2013-072. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549,

on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NASDAQ-2013-072, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).